

## **MINUTES**

### **MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON FINANCE & CLAIMS**

**Call to Order:** By Senator Judy Jacobson, Chair, on April 13, 1993, at 10:00 a.m., Room 108.

#### **ROLL CALL**

##### **Members Present:**

Sen. Judy Jacobson, Chair (D)  
Sen. Eve Franklin, Vice Chair (D)  
Sen. Gary Aklestad (R)  
Sen. Tom Beck (R)  
Sen. Don Bianchi (D)  
Sen. Chris Christiaens (D)  
Sen. Gerry Devlin (R)  
Sen. Gary Forrester (D)  
Sen. Harry Fritz (D)  
Sen. Ethel Harding (R)  
Sen. Bob Hockett (D)  
Sen. Greg Jergeson (D)  
Sen. Tom Keating (R)  
Sen. J.D. Lynch (D)  
Sen. Chuck Swysgood (R)  
Sen. Daryl Toews (R)  
Sen. Larry Tveit (R)  
Sen. Eleanor Vaughn (D)  
Sen. Mignon Waterman (D)  
Sen. Cecil Weeding (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Terry Cohea, Legislative Fiscal Analyst  
Lynn Staley, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing: HB 689, HJ 25, HB 666, HB 673, HB 691,  
HB 690, HJ 18  
Executive Action: None.

#### **HEARING ON HOUSE BILL 689**

##### **Opening Statement by Sponsor:**

Representative Marjorie Fisher, sponsor, said she was presenting HB 689 at the request of the subcommittee of general government and highways. HB 689 generally revises statutory appropriations to the Department of Revenue.

**Proponents' Testimony:**

None.

**Opponents' Testimony:**

None.

**Informational Testimony:**

Terry Cohea, LFA, presented an amendment to HB 689. (Exhibit 1) The amendment would delete the statutory appropriation in HB 689 for the expenses of administering the income tax check-offs. \$14,000 is appropriated in HB 2 each year from state special revenue for this purpose. The legislature usually does not appropriate operating expenses in statutory appropriations.

**Questions From Committee Members and Responses:**

Senator Waterman said she was involved in the DARE check-off previously, and there was contingency language if that bill did not raise \$20,000 a year for one of the two preceding years that it would sunset. She stated the threshold was not met the first year, but she feels it will give incentive through the program to reach the threshold the second year. She asked Rep. Fisher if she would have an objection to adding the contingency language to the check-off programs in the future.

Rep. Fisher said she would not have a problem with that.

Senator Jacobson said we have appropriated before out of the various funds some operating expenses to the Department of Revenue but we have never done it as a statutory appropriation. She questioned why the committee chose to make this a statutory appropriation which then will have no review by the legislature.

Rep. Fisher said the Department of Revenue (DOR) felt they needed it put in there.

Senator Jacobson said we would be giving them this money to take care of the programs with no legislative review when we statutorily appropriate.

Ms. Cohea said they checked with the DOR. She did not feel the subcommittee voted to make it a statutory appropriation. When the DOR worked with the Legislative Council, it was drafted that way. The amendment before us will remove it from being a statutory appropriation because the subcommittee appropriated the money in HB 2, therefore at this point, there would be a double

appropriation. Exhibit 1 would correct that.

Senator Keating said this reduces general fund which previously covered the cost of administration. He questioned why this could not go into state special revenue as a charge against the fund. Then it could be reviewed. He felt the limit should be \$30,000 rather than \$20,000 if we are going to charge \$2,800 to administer them. He asked Ms. Cohea if Exhibit 1 makes it state special revenue rather than a statutory appropriation.

Ms. Cohea said HB 689 as it stands places the money in state special, but the amendment would make it so that it is subject to legislative appropriation versus a statutory appropriation.

Senator Devlin asked if there has been established a set rate for the administration of the funds.

Senator Jacobson said it was her understanding as each one came in, the bill would pass and it would come to HB 2 conference committee and try to get an amount justified. It was not a set percentage, but whatever they were able to justify at the time. The cost at the beginning for the first one is more because changes have to be made but as more come on, the cost would probably be less.

Senator Keating asked Jack Ellery from the Department of Revenue (DOR) regarding the \$2,850 charge. If three of them were eliminated because they did not achieve the \$20,000 limit, would it still cost \$14,000 to manage the two.

Mr. Ellery said the intent was as these were eliminated, the funding would be reduced as well. Each one costs roughly \$2,800 a year to administer.

When questioned by Senator Keating if administrative costs could be reduced if there were more funds, Mr. Ellery said the bulk of the costs are computer processing costs and computer storage costs.

Closing by Sponsor:

Rep. Fisher closed.

HEARING ON HOUSE JOINT RESOLUTION 25

Opening Statement by Sponsor:

Rep. Marjorie Fisher, House District 3, sponsor, stated HJR 25 is a resolution urging the governor and the attorney general to study the delivery of legal and law enforcement services to the State of Montana and make recommendations to the next legislature.

Rep. Fisher said the subcommittee on general government and transportation felt government needed to be streamlined. There are many people with the same job titles, and this should be reviewed.

**Proponents' Testimony:**

Chris Tweeten, Chief Deputy Attorney General, in stating his support said the attorney general and the governor will work for improvement in the efficiency with which they deliver legal services to state government in civil matters. He concluded they look forward to the opportunity to do the study and give the results to the next legislative session.

**Opponents' Testimony:**

None.

**Questions From Committee Members and Responses:**

Senator Keating questioned Mr. Tweeten if any thought had been given to a legal pool whereby all department attorneys would be pooled into the attorney general's office.

Mr. Tweeten said that is a major feature of what they plan to study. In many states, the attorneys are assigned to work in various agencies of state government.

**Closing by Sponsor:**

Rep. Fisher closed.

**HEARING ON HOUSE BILL 666**

**Opening Statement by Sponsor:**

Rep. Wanzenried, House District 76, sponsor, said HB 666 was introduced at the request of the subcommittee on human services and aging. HB 666 would revise the statutory appropriation for the petroleum tank release cleanup fund. Under this proposal the petroleum board would have administrative expenses no longer statutorily appropriated. They would be legislatively appropriated like other programs in state government. He noted the appropriations subcommittee determined there was adequate reason to have some oversight. There has been a relatively large growth in staff. He said a newspaper article (Exhibit 1a) described an audit done that underscored some problems existing in the program where apparently overpayments were made. Although he does not know anything about the audit in detail, he feels it underscores the fact that the legislature should look at the internal controls and accounting functions that exist in the program. This cannot be done as long as there is a statutory appropriation. HB 666 does not change the flow of money into the

program, and does not change the earmarking of money to be used for the cleanup. The total program costs are about \$4.4 million. The administrative part of that expense would be subject to legislative oversight.

#### Proponents' Testimony:

Ray Hoffman, Administrator of Centralized Services, Department of Health and Environmental Sciences (DHES), stated his support of HB 666 in that it would clarify to the legislature as well as the subcommittee when it meets and would not cause confusion that existed by having a component of the agency being statutorily appropriated, yet another component that directly deals with the program being legislatively appropriated.

#### Opponents' Testimony:

Jean Riley, Executive Director, Petroleum Tank Release Compensation Board, stated her opposition to HB 666. (Exhibit 2) She added the audit was not totally correct. The Board staff has prepared information for that audit and sent it to the auditor. Regarding the information that the Board does not contract with consultants or contractors, the Board is a reimbursement program. The program is developed that the owner contract with the consultant or contractor to do a cleanup, and the Board reimburses. The Board reimburses actual, necessary and reasonable rates. There has been over a 20 percent reduction to the claims submitted.

Rep. Ed Grady said he felt this bill should go through Senator Grosfield's study bill, which it now is amended into that bill. This would be looked at before a change is made. Rep. Grady said he had Legislative Auditor Scott Seacat look into the program and see if there was a problem in the way it was being handled by the Board. He presented a copy of the reply from the legislative auditor. (Exhibit 3) Rep. Grady concluded that the Board has not been doing that bad of a job. They have had some problem with staff and need more help hired. Their workload fluctuates and they have to be able to hire staff when needed.

Rep. Grady said he had an amendment that would deal with emergency situations as far as getting budget amendments quicker to hire additional help.

#### Questions From Committee Members and Responses:

Senator Lynch questioned Rep. Grady why he felt this should be treated differently than the other two components.

Rep. Grady said a reason for statutory appropriations is to allow programs to function without going through the legislative process. He said he asked the Department of Health regarding this, and he has not seen a problem where there has been a bad job being done.

Senator Lynch could not see anyone suggesting that there has been a bad job.

Senator Jacobson said this is just on the administrative part of the program and has nothing to do with the other part of the program. She added in looking at the testimony of Ms. Riley, the Board funds 9.7 positions; HB 2 has them funded for 16.7 positions. She concluded they have quite a lot of flexibility already.

Ms. Riley said the Board funds 9.7 in the DHES. They have seven staff members who report directly to the board, so there are actually 16.7 positions.

Senator Devlin said it was his understanding that Ms. Riley said they do not think they need to be under controls because they need flexibility to add personnel.

Ms. Riley said anytime a position on the Board becomes vacant, they look to whether that position should be rehired. Both staffs look at the budget annually to determine what is needed.

Senator Devlin noted the workload of cleaning up the tanks must be decreasing across the state.

Ms. Riley said at this point in time they are still increasing. In 1998 all tanks are required to be upgraded which means they will either be removed, replaced or upgraded. When asked by Senator Devlin if at that point there should be a decrease in personnel, Ms. Riley said that was correct.

Senator Devlin questioned the appropriations for the people within DHES that are not directly responsible to the cleanup board.

Mr. Hoffman said the statutory appropriation provision is toward the entire Board, which includes those staff in the Department that are providing the Board with analysis data on the tank. The Board can determine whether or not they want those staff based on recommendations to them by the Department. He added the budget was turned in to the Office of Budget and Program Planning. In the executive narrative, there is a statutory appropriation of \$4.4 million that was lined out.

Senator Keating questioned if the source of funds for the operation is gasoline tax and permit fees.

Ms. Riley said the program is presently funded on three-quarters of a cent for every gallon of gasoline distributed in the state. The fund balance exceeded \$8 million so the fee was discontinued in October 1991, and it has not been reinstated. SB 228 will cause that fee to be reinstated in July of this year.

Senator Keating asked if the DHES personnel process applications

for cleanup.

Ms. Riley said they oversee the cleanup requirements to make sure the owners have met the requirements of the DHES.

When questioned by Senator Keating as to what the seven people at the Board do, Ms. Riley said they review the cost of claim submittals. They review anticipated costs of cleanup and make sure that the claims get paid. They review total costs as they are submitted to make sure the costs are necessary and reasonable.

Senator Keating asked Ms. Riley why additional people are needed.

Ms. Riley said at the last Board meeting, 75 claims were processed which was \$325,000. There were 76 claims that did not get processed because of lack of staff.

**Closing by Sponsor:**

Rep. Wanzonried closed, saying legislative oversight is needed to determine staffing and funding levels.

**HEARING ON HOUSE BILL 673**

**Opening Statement by Sponsor:**

Rep. Menahan, House District 67, sponsor, said HB 673 would require probationers and parolees to pay a supervisory fee and that the money be used for equipment and training for the probational and parole officers.

Rep. Menahan said he would like HB 673 amended on page 3, line 11, by striking "\$25 a month", and inserting "\$50 per year".

**Proponents' Testimony:**

Terry Minow, representing Montana Federation of State Employees, stated their support of HB 673 with the amendment proposed by Rep. Menahan. She noted that HB 673 would provide a better level of resources than the current system of providing training and equipment. She concluded this would provide a source of revenue so that those that are able to pay part of the cost of rehabilitation will participate in funding a high quality system of supervision and rehabilitation.

Mike Ferriter, Community Corrections Bureau Chief, stated his support of HB 673 only if the supervision fees are an additional source of income for probation and parole field staff. He would have concerns if the fees would supplant existing general fund allocations. HB 673 would provide a great deal of revenue and

support the mission of the Department of Corrections by making clientele more responsible and accountable for their actions.

**Opponents' Testimony:**

None.

**Questions From Committee Members and Responses:**

Senator Lynch questioned where the \$50 figure was derived from and why it should be statutorily appropriated instead of going through the legislative process.

Rep. Menahan said as was mentioned by Mr. Ferriter, we do not want this to supplant general fund money. He said 33 new vehicles are needed because of high mileage on existing vehicles. This would cover equipment like hand-held radios, protective vests and other needed equipment, and they want it directed to those officers. He added the \$50 figure was arrived at by the parole officers. He would be agreeable to \$10 per month if that would be deemed fair. He added some compensation would be given back to the treasurer's office for that fee.

Senator Christiaens questioned if money for vehicle purchases was normally derived from general fund money.

Mr. Ferriter said they normally go through the general fund, but added they have not had a replacement vehicle for six years. The only way vehicles are added to probation and parole is that when they are able to hire new positions created by the legislature, a vehicle is included.

When questioned by Senator Christiaens if the Department of Corrections asked for vehicles this session, Mr. Ferriter said they asked for vehicles to complement any new hired positions.

Senator Christiaens asked Mr. Ferriter how successful the field staff is in collecting restitution.

Mr. Ferriter said it is supported by the probation and parole officers union. He added they are very successful in collecting restitution. On a monthly basis, they collect in the neighborhood of \$50,000 statewide.

**Closing by Sponsor:**

Rep. Menahan closed. He said community based people should be well equipped to do their jobs.

**HEARING ON HOUSE BILL 691**

**Opening Statement by Sponsor:**



Rep. Cobb, House District 42, sponsor, said HB 691 would create a special account for monies for certificates of need to reduce the general fund. He said a special revenue account has to be created.

**Proponents' Testimony:**

Ray Hoffman, Centralized Services Division, DHES, stated his support of HB 691, saying without it the certificate of need legislation could not be accomplished that is currently on the books.

Daniel Shea, private citizen, Helena, Montana, stated his support of HB 691 (Exhibit 4).

**Opponents' Testimony:**

None.

**Questions From Committee Members and Responses:**

Senator Swysgood asked Rep. Cobb how many fees would be anticipated to generate \$40,000.

Rep. Cobb said it was figured out that it would be between .3 and .4; it would be no greater than .4 percent. The nursing homes wanted an amendment to make sure it never went sky high; they wanted it at least .3 but less than .4.

**Closing by Sponsor:**

Rep. Cobb closed.

**HEARING ON HOUSE BILL 690**

**Opening Statement by Sponsor:**

Rep. Wiseman, House District 33, sponsor, said HB 690 allows the School for the Deaf and Blind the authority to charge for the services they perform.

**Proponents' Testimony:**

Wayne Buchanan, Board of Public Education, stated his support of HB 690.

**Opponents' Testimony:**

None.

**Questions From Committee Members and Responses:**

Senator Jergeson asked Rep. Wiseman if he was proposing to shift

the burden to the local school districts that may have a handicapped child in their district that needs these services.

Rep. Wiseman said it may be considered a shift in services, but he felt there is a definite need to leave these children in their home school district as much as possible rather than sending them to a boarding situation in Great Falls. This would provide a mechanism where the School for the Deaf and Blind can provide the service that the children need. These are children that do not need boarding at the School in Great Falls but do need help which can be given in their home school district.

Senator Jergeson questioned if the local school district being charged a fee would prefer fiscally that the children not get services in the community provided by the School for the Deaf and Blind but that the children should be sent to Great Falls where the School for the Deaf and Blind would cover the entire cost.

Rep. Wiseman said that could be a consideration but it is envisioned that these fees and services will be low cost, and he could not imagine the local school district coming up with the money.

Senator Jacobson said this started with the School eliminating the itinerant teachers program. They then requested that money be taken from the special education budget and be given to the School for this program. The House did not accept that as a viable alternative. She felt HB 690 was presented as a result of that attempt.

Senator Forrester questioned if the child study team meeting would take place regarding placement.

Rep. Wiseman said there would be no change in the individual study plan for the students. There will be no attempt by the School for the Deaf and Blind to come in and take away local prerogatives. There would be three outreach workers across the state that will travel to work with handicapped children needing extra help that could stay in local schools with the extra help. He added that \$256,000 is the maximum that the School for the Deaf and Blind can make yearly by providing these services. Any additional would go to the general fund. That would encourage the School for the Deaf and Blind to provide the needed services and no more.

Senator Jacobson said it was her understanding that this was permissive in that the school did not have to request this; they have to charge a fee if the school requests the services.

Rep. Wiseman said that was correct.

Senator Jacobson questioned the situation if the School for the Deaf and Blind hired the three people and then there was no request for the services.

Rep. Wiseman said he assumed the School for the Deaf and Blind would have to let some of the people go.

Senator Christiaens questioned if the School for the Deaf and Blind felt they had the ability to collect the money from the school districts.

Rep. Wiseman said the presentation from the School for the Deaf and Blind indicated that with the authorization in the law that as workers are sent out they would have the capability of recovering the fees. If the school district does not pay the bills, they will not go back.

When questioned by Senator Hockett where the spending authority was shown in HB 690, Senator Jacobson said the spending authority is in HB 2.

Senator Hockett asked where the children would go if the services were cut off because the money was not paid.

Rep. Wiseman said that is up to the local school district.

Senator Jacobson questioned what happens if the parents request the services; would the school be automatically required to pay.

Rep. Wiseman said the reason there is the wording in HB 690 is to allow the School for the Deaf and Blind to service private schools and parents who want to pay. He felt there was nothing in HB 690 that would allow parents to engage a school district without the district agreeing in advance.

Senator Waterman questioned if they are contracted employees for the year and could they be laid off if the service is not contracted.

Wayne Buchanan said the employees referred to are outreach people that are employed by the School for the Deaf and Blind. The schools are required to provide the services. If as in larger school districts, the services can be provided locally, these services will be used. If they do not have staff capable of providing the services to the Deaf and Blind School children, the School is the most logical place to go. They are required by the child study teams to provide education for these students, and if they are placed in the School for the Deaf and Blind, that is a placement that is made and it should not be affected by HB 690.

Closing by Sponsor:

Rep. Wiseman closed.

HEARING ON HOUSE JOINT RESOLUTION 18

Opening Statement by Sponsor:

Rep. Sheila Rice, House District 36, sponsor, said HJR 18 would allow certain state agencies to be selected for a pilot project on lump sum budgeting for the biennium beginning July 1, 1995.

**Proponents' Testimony:**

Gerald Mueller, private citizen, Missoula, Montana, stated his support of HJR 18 (Exhibit 5).

**Opponents' Testimony:**

None.

**Questions From Committee Members and Responses:**

Senator Hockett questioned what the agency or bureau affected might benefit from this; he felt there should be a reward along with the requirements.

Rep. Rice said a companion bill regarding pay for performance did not pass the House. She noted many state employees approached her with enthusiasm about the concept of HJR 18.

Senator Fritz said he would like to have specific examples of agency heads regarding programs that they might agree to cut their budget by ten percent.

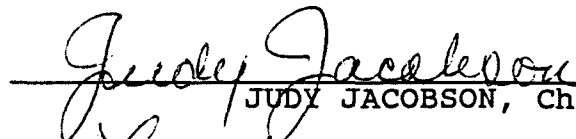
Mr. Mueller said Mr. Jamison in the Department of Natural Resources told him he would be interested in reducing his budget by ten percent in return for the flexibility of deciding how to spend the money that is allocated to him.

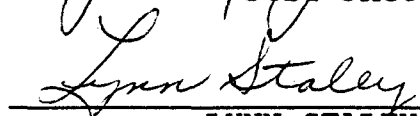
**Closing by Sponsor:**

Rep. Rice closed by noting her feeling that HJR 18 is a step in the right direction for state government.

**ADJOURNMENT**

Adjournment: 12:05 p.m.

  
JUDY JACOBSON, Chair

  
LYNN STALEY, Secretary

JJ/LS

# ROLL CALL

SENATE COMMITTEE FINANCE AND CLAIMS

DATE 4/13/93  
a.m

NAME	PRESENT	ABSENT	EXCUSED
SENATOR JACOBSON	✓		
SENATOR FRANKLIN	✓		
SENATOR AKLESTAD	✓		
SENATOR BECK	✓		
SENATOR BIANCHI	✓		
SENATOR CHRISTIAENS	✓		
SENATOR DEVLIN	✓		
SENATOR FORRESTER	✓		
SENATOR FRITZ	✓		
SENATOR HARDING	✓		
SENATOR HOCKETT	✓		
SENATOR JERGESON	✓		
SENATOR KEATING	✓		
SENATOR LYNCH	✓		
SENATOR TOEWS	✓		
SENATOR SWYSGOOD	✓		
SENATOR TVEIT	✓		
SENATOR VAUGHN	✓		
SENATOR WATERMAN	✓		
SENATOR WEEDING	✓		

FC8

Attach to each day's minutes

Amendments to House Bill No. 689  
Third Reading Copy

SENATE FINANCE AND CLAIMS

Requested by Sen. Jacobson  
For Senate Finance and Claims Committee

EXHIBIT NO.

DATE

BILL NO.

Prepared by Jon Moe  
April 6, 1993

1. Page 1, lines 9 through 11.  
Following: "PROGRAMS;" on line 9  
Strike: remainder of line 9 through ";" on line 11
2. Page 2, line 14.  
Following: "account"  
Insert: ", subject to appropriation,"
3. Page 2, lines 17 through 20.  
Strike: lines 17 through 20 in their entirety
4. Page 8, line 18.  
Following: "15-25-123;"  
Strike: "[section 2];"

This amendment would delete the statutory appropriation in House Bill No. 689 for the expenses of administering the the income tax checkoffs. \$14,000 is appropriated in HB 2, the general appropriations act, in each year from state special revenue for this purpose. In addition, the legislature usually does not appropriate operating expenses in statutory appropriations.

{Office of Legislative Fiscal Analyst

444-2986}

## Leak cleanups overcharged

### Audit finds overbilling in underground storage tank program

by BOB ANEZ

Associated Press Writer

Contractors are overcharging a state program that helps pay for cleaning up leaks from underground storage tanks, a report released Monday suggests.

The partial review of Petroleum Tank Release Compensation Board records cited two examples of contractors inflating their labor costs or charging administrative expenses twice.

Prepared by Joe Lundberg, an auditor in the Department of Health and Environmental Sciences, the report said the program lacks adequate controls to make sure only legitimate costs are paid.

"You really don't know what you're paying for," Lundberg told the board Monday. "I have a problem with (it) in terms of the use of public dollars."

"Some of it appears to be double-dipping," said Bob Robinson, a board member who is the health department's director. "It's important to set standards upon

which reimbursement is being made."

"This is the most ridiculous thing I have ever heard," Ron Guttenberg, a board member from Glasgow, said of the report's findings. "We got a runaway. We have to go back to the taxpayers of Montana and tell them what we're spending their money on."

The public wants leaking tanks cleaned up but also

wants assurances the money is being used properly, he added.

Board members agreed to consider changes in the process of reviewing and approving claims at their April 19 meeting. An advisory council was formed to make recommendations by then.

The audit report was discussed at an unannounced meeting of the board. The official agenda listed the meeting as starting at 9:30 a.m. Monday, but four of the seven members met about 9 a.m. to review the document.

Asked why the public was not notified of the early board gathering, Jean Riley, executive director for the board, said it was a staff meeting that happened to include the board.

The board agreed to release only a censored version of the audit after removing names of the two contractors cited for apparent overcharges by Lundberg. Board members said linking companies to specific labor and other costs would reveal proprietary business information.

The board runs a program that

uses gasoline taxes to help pay for cleanup of leaks from underground fuel tanks. The money reimburses property owners some of their costs in hiring contractors to handle the cleanup.

Since created in 1989, the program has received claims for \$8.4 million and paid out \$4.8 million on 817 claims. Only 16 claims have been rejected.

The board expects to spend \$4.4 million annually over the next two years.

The audit noted one contractor submitted claims for labor costs of \$2,713, while the actual expense was \$776.

While the company did not charge for administrative expenses it did charge for word processing at \$35 an hour and secretarial costs of \$25 an hour.

The contractor also claimed payment for mileage at the rate of \$1.34 a mile, or five times the rate for state employees.

Another contractor charged \$4,902 for labor when the rate should have totaled \$1,169. The difference was assumed to be overhead and profit, but Lundberg said the company also submitted a bill for \$356 in administrative expenses, such as preparing invoices.

Testimony HB 666  
Senate Finance and Claims Committee  
Petroleum Tank Release Compensation Board  
Jean Riley, Executive Director

SENATE FINANCE AND CLAIMS  
EXHIBIT NO. 2  
DATE 4/13/93  
BILL NO. HB 666

The Board opposes this legislation in its present form. No one has explained why this bill is necessary. Rep. Wanzenried stated the Board is a bank for the Underground Storage Tank (UST) Program. Let me set the record straight. The Board funds 9.7 positions within DHES to allow DHES to carry out their requirements under this statute. The rest of the positions within the UST Program are not funded by the Board.

The Board staff is not trying to hide anything. Budgets were prepared and submitted to DHES during the Executive Planning Process in March of 1992 and legislative budgeting process in August 1992. These Budgets were never submitted to either the Legislative Fiscal Analyst or the Office of Budget and Program Planning. DHES stated we were statutory appropriated and did not have to submit budgets. The Board does not have a problem with legislative review. The question is why now. With the rate this program is growing (\$1 million claims 1990, \$2 million 1991, and over \$3 million 1992) staffing requirements are difficult to anticipate. The number of releases is also increasing. DHES staff reported a 50% increase during calendar year 1991 in the total number of releases reported.

EPA draft document "Monitoring Financial Soundness of Approved State Assurance Funds" states--"If funding levels or claim process time has a negative impact on the cleanup of releases from USTs (i.e. causing undue delays in cleaning up release therefore harming human health and the environment), then EPA is concerned about the financial soundness of the fund."

The Board presently has the ability to hire staff as the work load or claim payment requires. DHES has the ability to ask the Board for additional funding if the number of releases increase.

The Board has had concerns since it's inception with building a bureaucracy. The Board wants to assure adequate staff to complete its requirement under the statute. The Board reviews all staffing requests and determines if positions are necessary and justified.

The present language in this bill could harm this program and ultimately put an undue burden on tank owners/operators and the people of Montana.





STATE OF MONTANA  
Office of the Legislative Auditor

STATE CAPITOL  
HELENA, MONTANA 59620  
406/444-3122

LEGISLATIVE AUDITOR:  
SCOTT A. SEACAT

LEGAL COUNSEL:  
JOHN W. NORTHEY

April 5, 1993

DEPUTY LEGISLATIVE AUDITORS:

MARY BRYSON  
Operations and EDP Audit

JAMES GILLET  
Financial-Compliance Audit

JIM PELLEGRINI  
Performance Audit

Representative Ed Grady  
P.O. Box 49  
Capitol Station  
Helena, MT 59620

SENATE FINANCE AND CLAIMS

EXHIBIT NO. 3

DATE 4/13/93

BILL NO. 48666

Dear Representative Grady:

Enclosed is a memorandum explaining our review of the preliminary limited review report and related workpapers concerning the Petroleum Tank Release Compensation Board's claim procedures.

We do not believe further involvement by our office is necessary at this time; however, during the next biennial audit of the Department of Health and Environmental Sciences we will consider looking at the internal auditor's recommendations to the petroleum board.

If we can be of further assistance to you, please call.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott A. Seacat".

Scott A. Seacat  
Legislative Auditor

TH/v/v5.1tr

Enclosure

M E M O R A N D U M

DATE: April 5, 1993

TO: Jim Manning, Audit Manager

FROM: Tori Hunthausen, Senior Auditor

RE: DHES Internal Review of the Petroleum Tank Release  
Compensation Board's Claim Procedures.

On November 17, 1992, the internal auditor of Department of Health and Environmental Sciences (DHES) was requested by the petroleum board to conduct a limited review of board claim procedures, including documentation requirements. There was an engagement memorandum from the board, dated the 30th of November and signed by board personnel, identifying specific questions to address within the limited review.

Through interview and review of the internal auditor's workpapers pertaining to this limited review, I determined the following.

The scope of the limited review included a review of two claims to determine the extent of documentation submitted to support the claims. The internal auditor did not review a random sample of claims; however, he reviewed two claims provided to him by board personnel.

Labor charges were recalculated based on raw labor rates. These rates were obtained from DHES leaking underground storage tank (LUST) contracts with the same contractors using the midpoint base salary. It was concluded by the internal auditor, based on the information available in the files, it is not possible to determine what the loaded labor rates represent above the actual rates of pay. There was not an itemized listing of the charges included in the hourly rates. At no point did the workpapers or the preliminary report say the state had been "overcharged" or "double dipped." The limited review did not include tracing invoices to what was approved for payment.

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We traced the two contractor invoices to what was actually approved for payment. The first claim included a denial by the board of \$8.70 in mileage. The second claim also denied charges of \$127.50 in data processing charges, \$1.80 in mileage charges, and \$585 in labor for time spent on review of claim denials and preparation of responses.

The workpapers also noted the board followed no formal or consistent procedures to determine the allowability of claim amounts. There are no specific guidelines for what is allowable. For example, volunteer work is not "normally" an allowable expenditure. However, there may be an exception to the "normal" circumstance. There are no guidelines for contract owner/operator responsibilities for support documentation. The board provides the responsible party with an Assent to Audit form. The form is not required to be signed before the completion of contract work and a subcontractor signature is not required.

Board personnel prepare a claim summary and submit it for DHES review. DHES reviews the claim for reasonableness. The workpapers show DHES LUST personnel have notified board personnel of concerns about the number of hours contractors are spending on a clean-up site and the rate charged. However, a concern was noted by the internal auditor that no board documentation exists on the followup of these concerns.

Based on my understanding an internal evaluation of the board's procedures, including the board's documentation requirements, was requested by board personnel. The limited review indicates controls could be improved. The workpapers identify instances where, based on the available documentation, a conclusion on the propriety of a claim(s) could not be determined. The internal auditor's limited review was not a full audit conducted in accordance with generally accepted auditing standards. The report on the limited review gives preliminary recommendations to the board in the areas the internal auditor was asked to review.

I do not believe further involvement by OLA is necessary at this time. However, during the next biennial audit of the department we will consider looking at the internal auditor's recommendations to the board.

v/v5.mem

SENATE FINANCE AND CLAIMS

EXHIBIT NO. 4  
DATE 4/13/93  
BILL NO. HB 691

To the Senate Finance & Claims Committee  
Honorable Judy Jacobson, Chairman, and Members

Re: House Bill NO. 691--A bill to create a special account for moneys from certificate of need applications, to be used for expenses incurred in processing the applications.

Suggested Action: I urge a do pass, but also urge this Committee and both full houses to bring hospitals onto the playing field by requiring a certificate need for them also. As it stands now, hospitals have a specific exemption, and the exemption creates an unfair if not not unconstitutional preference for the hospitals.

As this Committee is aware, hospitals in 1989 were given a special exemption from the certificate of need requirements. As a result, hospitals can do virtually anything they want in the way of capital expenditures and expansions, including expenditures for major medical equipment, and the public has absolutely no say, even though the public ends up paying the bills.

The special exemption to hospitals gives them an unfair advantage--it creates an uneven playing field with the hospitals dictating the rules and even the results.

Example: If a group of doctors wants to build an outpatient operating center, they must go through the certificate of need process. And when they do so, the hospitals are sure to object. The hospitals will argue that they have the capacity to handle all of the doctor's needs, and therefore that the doctors should be required to perform all their operations at the hospital. The hospitals will argue that the proposal of the doctors constitutes an unnecessary duplication of capital expenditures.

The problem is that the hospitals may be right, technically. However, when one examines how the hospital acquired the particular operating room capacity, we find that the hospitals built new additions, or extensively remodeled in order to create that capacity. But when they did so, unlike the doctors, they were not required to obtain a certificate of need before they commenced new construction, built on, or remodeled. Because of the exemption provided by the 1989 legislature, they just went ahead and did it--the public be damned. This is entirely unfair.

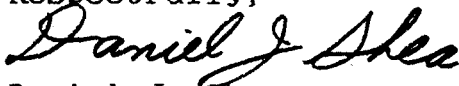
In the hospitals situation, noone can protest what they do. But in the doctors case everyone can protest, including the hospitals. If this legislature desires to continue the certificate of need exemption for the hospitals, it should

amend the law by declaring that hospitals, being exempt from the certificate of need process, have no standing to challenge any application for construction the effect of which may compete with or tend to take business from the hospital. Why, I ask, should hospitals be able to build with impunity, and still be able to challenge someone else's project that is subject to the certificate of need requirement?

In this situation, those who must go through the certificate of need process, and who may be competitors against the hospital, or providing services that the hospital also provides, are denied equal protection of the law. The special exemption for the hospitals has granted, in effect a monopoly of certain services, and the hospital monopoly is protected by the law that requires all competitors to go through the certificate of need process and which allows the hospitals to challenge the need for the non-hospital services as applied for in the certificate of need application.

Surely, the best way to create a level playing field, to prevent monopoly, to prevent an unconstitutional preference to hospitals, is to require the hospitals also to obtain a certificate of need. This legislature is perpetuating a huge problem by not taking care of this glaring inequity during this session. And by not taking care of this inequity this session, the public will end up paying the cost.

Respectfully,

A handwritten signature in cursive script that reads "Daniel J. Shea".

Daniel J. Shea  
Helena, Montana

TESTIMONY OF GERALD MUELLER  
ON HJR 18

Madam,  
Mr. Chairman, members of the committee, for the record my name is Gerald Mueller, and I live at 7165 Old Grant Creek Road in Missoula. I testify today in support of HJR 18 as a private citizen interested in an efficient, productive, and cost conscious state government. Although I now work in the private sector, from 1974 to 1988 I was an employee of the executive branch of state government. During seven of those years I had administrative and managerial responsibilities. Today my work in the private sector as a consultant offering services in dispute resolution has kept me in contact with state agencies and state employees.

I support HJR 18 because we need to change the state budgeting process. Change is needed because the budget has become more important than the services it is supposed to facilitate, because today's budgeting practices interfere with the proper roles of the legislature and executive branch agencies, and because budgets inhibit rather than promote the efficient and cost effective provision of services.

As HJR 18 states, government exists to provide services to people, not to collect and spend taxpayer dollars; budgets and taxes are merely the means to an end and not the end itself. However, the continuing budget crises of the last several bienniums has resulted in much more focus on the means than the ends. This legislature faces the task of eliminating a \$200 million general fund deficit in large part because the executive and legislative branches together have failed to decide which public services are truly vital and to fund those services adequately.

The focus on budgets rather than on providing services to people together with line-item and other budgetary restrictions results in perverse incentives for agency managers to spend rather than save money. If for any reason they do not spend all of the funds allocated for their programs, managers must revert any unspent money at the end of the fiscal year to the state general fund, and they risk having the legislature reduce their next biennium budget by the unspent amount. Spending their budgets as directed by the legislature becomes more important than achieving agency mission and goals, and saving money becomes an aspect of management failure rather than success.

The lump-sum budgeting accompanied by performance contracts authorized in HJR 18 is one of the changes that is needed. Lump-sum budgeting will help reestablish the proper division of responsibilities between the legislature and executive branch agencies. It will free agency managers to do their jobs - to ensure that services are provided to people efficiently and at the least cost.

Again paraphrasing HJR 18, the Montana Constitution created the legislature to act as the primary policy maker for the people of

TESTIMONY OF GERALD MUELLER  
ON HJR 18  
Page 2

the state. The legislature is responsible for deciding which services state government can and must provide and for ensuring that the services are in fact provided. You accomplish the latter by establishing missions and goals for executive branch agencies and by providing the fiscal resources necessary to achieve the mission and goals.

Unfortunately, as every member of this legislature knows well, the present budget process does not enhance your policy making role. Instead, it forces you do spend countless hours deciding not only how much money agencies should spend but also specifically how they will spend it. You decide how many employees each agency will have, how much they can travel, how many filing cabinets they can buy, when they can replace their furniture and upgrade their computer software, and on and on. In other words, present line-item budgeting forces you in a ninety-day session to make detailed management decisions for all of state government for a two year period.

Instead of a policy makers you have become "bean counters".

Legislators have taken on this "bean counting" role for a legitimate reason: to attempt to ensure their constituents that state government spends taxpayer dollars wisely. The question is, is this the best method for meeting this objective?

Based on my experience working in and with state government, I can answer this question without hesitation: no. State government hires men and women who are trained, experienced, and talented managers. There is no way that a part time legislature in ninety days can manage state money better than full time agency managers, IF - and the if is crucial - IF agency managers are given clear mission and goals by the legislature, and IF the legislature holds agencies accountable for meeting them.

HJR 18 would meet these conditions. It would allow lump-sum budgeting only if an agency enters into a performance contract containing specific mission and goal statements, measurable objectives and consequences to agency staff for achieving or failing to achieve the objectives.

In case you as legislators are not as convinced as I am of the problems inherent in the present line-item budgeting, HJR 18 contains another carrot for you. Agencies agreeing to this experiment must also accept a 10% reduction in their general fund appropriation. This 10% reduction presents a challenge to state agency managers: can you as managers use your expertise, experience and talent to manage your programs in a way that meets the negotiated objectives at 10% less cost? I would be surprised based on my nineteen years working in and with state agencies if you do

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ON HJR 18  
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not find ten managers willing to accept this challenge.

In closing, during the last gubernatorial campaign both candidates argued for the need to "re-invent" government to make it more productive and efficient. HJR 18 would provide the first real opportunity to begin this re-invention. As a private citizen and a taxpayer, I compliment Rep. Rice for introducing this bill and urge this committee to recommend that it be passed by the full Senate.

Thank you.



DATE April 13, 1993

SENATE COMMITTEE ON Finance And Claims

BILLS BEING HEARD TODAY: HB 666, HB 673, HB 689,  
HB 690, HB 691, HJR 18, HJR 25

Name

Representing

Bill  
No.

Check One  
Support Oppose

Claud Matney	MATNEY-FRANTZ ENGR	666		✓
Mark Johnson	" " "	"		✓
Gerald Mueller	Self	HJR 18	✓	
Chris Tweeten	Attorney General	HJR 25	✓	
Staci Riley	MFT / MFSE	HB 673 <sup>690</sup> <sub>HB</sub>	✓	
Jean Riley	Petroleum Task Eds. Com. Panel	664		✓
Terry Miron	MFT / MFSE	HB 673	✓	

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE April 13, 1993

SENATE COMMITTEE ON Finance and Claims

BILLS BEING HEARD TODAY: HB 666, HB 673, HB 689,  
HB 690, HB 691, HJR 18, HJR 25

Check One

Support Oppose

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# VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY